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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

KUSH, INC., a Nevada corporation,

Plaintiff

v.

FRANK VAN VRANKEN, an individual;  
DOES I-X, inclusive, and ROE Corporations  
I-X, inclusive,

Defendants

Case No.: 2:20-cv-00647-APG-NJK

**Order Granting in Part Defendant's  
Partial Motion to Dismiss**

[ECF No. 32]

Defendant Frank Van Vranken moves to dismiss the Sixth, Seventh, Eighth, and Ninth Claims for Relief in the Amended Complaint. I will grant most but not all of that motion.

The Sixth Claim for Relief asserts fraud. Paragraphs 84-85, 87, and 101 of that claim do not sufficiently aver the specifics (where, when, to whom, and how) of Van Vranken's allegedly false representations. Thus, they do not satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b). I dismiss this claim but allow for amendment.

The Seventh Claim for Relief asserts constructive fraud. Paragraph 108 of that claim does not sufficiently aver the specifics about how Van Vranken allegedly "breached his duties in a way that the law declares fraudulent." ECF No. 24 at 13. Thus, that paragraph does not satisfy Rule 9(b). I dismiss this claim but allow for amendment.

The Eighth Claim for Relief asserts interference with prospective economic advantage. Plaintiff Kush, Inc. previously agreed to dismiss the original version of this claim (which was the Seventh Claim for Relief in the original complaint). *See* ECF No. 15 at 4. Kush re-pleaded this claim in the Amended Complaint without any meaningful changes. And Kush did not oppose the portion of Van Vranken's motion seeking to dismiss this claim. *See* ECF No. 33. Based upon

1 Local Rule 7-2(d),<sup>1</sup> and because this claim is not materially different from the previously  
2 dismissed claim, I dismiss this claim with prejudice.

3 Then Ninth Claim for Relief asserts breach of fiduciary duties. It is adequately pleaded.  
4 Therefore, I deny the motion to dismiss this claim.

5 I THEREFORE ORDER that the defendant's partial motion to dismiss (**ECF No. 32**) is  
6 **granted in part.** The Sixth and Seventh Claims for Relief in the Amended Complaint are  
7 dismissed without prejudice to refile. The Eighth Claim for Relief is dismissed with prejudice.  
8 The motion to dismiss is denied as to the Ninth Claim for Relief. Plaintiff Kush, Inc. may file a  
9 Second Amended Complaint, repleading the Sixth and Seventh Claims for Relief, by March 26,  
10 2021.

11 DATED this 5th day of March, 2021.



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13 ANDREW P. GORDON  
14 UNITED STATES DISTRICT JUDGE  
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<sup>1</sup> "The failure of an opposing party to file points and authorities in response to any motion, . . . constitutes a consent to the granting of the motion." LR 7-2(d).